

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS
RECEIVER FOR ARTHUR LAMAR ADAMS
AND MADISON TIMBER PROPERTIES LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 3:19-00196-CWR-FKB

BANKPLUS ET AL.

DEFENDANTS

JASON COWGILL'S MOTION TO DISMISS

COMES NOW Jason Cowgill, one of the Defendants herein, by and through undersigned counsel, and moves the Court to dismiss the Complaint filed herein against him pursuant to Federal Rule of Civil Procedure 12(b)(6), as follows:

1. The Complaint [#1] fails to allege that Cowgill had any knowledge that Madison Timber was a Ponzi scheme or that he agreed to assist in furtherance of any fraud. Further, the Receiver fails to identify any underlying tort for civil conspiracy.

2. The Court cannot find for a claim of civil aiding and abetting against Cowgill because no such cause of action exists in Mississippi. Notwithstanding, the Complaint fails to demonstrate Cowgill had any knowledge of tortious conduct.

3. The Complaint fails to identify any duty Cowgill owed to Lamar Adams or Madison Timber in support of the Receiver's claims for recklessness, gross negligence, or negligence.

4. The Complaint fails to adequately allege a claim for fraudulent transfer because the Receiver is not a creditor of Lamar Adams or Madison Timber, and the Complaint fails to allege payments made to Cowgill by Kelly Management for tasks he completed were an attempt by Adams or Madison Timber to hide assets from creditors.

5. The doctrine of *in pari delicto* bars the Receiver's claims against Cowgill because the Receiver stands in the shoes of Lamar Adams and Madison Timber, and cannot recover damages resulting from either Adams' or Madison Timber's wrongdoing. Further, the Receiver cannot claim an innocent successor exception to the doctrine because Mississippi has never recognized the exception and would not do so in these circumstances.

6. Cowgill relies on the Complaint [#1] and his Memorandum Brief filed in conjunction with this Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Cowgill respectfully requests that this Court grant his Motion to Dismiss and for such additional relief as the Court deems just and proper.

Respectfully submitted,

JASON COWGILL, ONE OF THE
DEFENDANTS HEREIN

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